

1980—Pub. L. 96-596, §2(c)(3), Dec. 24, 1980, 94 Stat. 3474, added item for subchapter C.

1978—Pub. L. 95-227, §4(c)(2)(A), Feb. 10, 1978, 92 Stat. 22, in chapter heading inserted “; BLACK LUNG BENE-FIT TRUSTS” after “FOUNDATIONS”, and added items for subchapters A and B.

1969—Pub. L. 91-172, title I, §101(b), Dec. 30, 1969, 83 Stat. 498, added chapter heading “PRIVATE FOUNDATIONS”.

Subchapter A—Private Foundations

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AMENDMENTS

1978—Pub. L. 95-227, §4(c)(2)(A), Feb. 10, 1978, 92 Stat. 22, added subchapter A heading and designated sections 4940 to 4948 as subchapter A.

1969—Pub. L. 91-172, title I, §101(b), Dec. 30, 1969, 83 Stat. 498, added analysis of sections.

§ 4940. Excise tax based on investment income

(a) Tax-exempt foundations

There is hereby imposed on each private foundation which is exempt from taxation under section 501(a) for the taxable year, with respect to the carrying on its activities, a tax equal to 2 percent of the net investment income of such foundation for the taxable year.

(b) Taxable foundations

There is hereby imposed on each private foundation which is not exempt from taxation under section 501(a) for the taxable year, with respect to the carrying on of its activities, a tax equal to—

(1) the amount (if any) by which the sum of (A) the tax imposed under subsection (a) (com-puted as if such subsection applied to such pri-vate foundation for the taxable year), plus (B) the amount of the tax which would have been imposed under section 511 for the taxable year if such private foundation had been exempt from taxation under section 501(a), exceeds

(2) the tax imposed under subtitle A on such private foundation for the taxable year.

(c) Net investment income defined

(1) In general

For purposes of subsection (a), the net invest-ment income is the amount by which (A) the sum of the gross investment income and the capital gain net income exceeds (B) the ded-uctions allowed by paragraph (3). Except to the extent inconsistent with the provisions of this section, net investment income shall be determined under the principles of subtitle A.

(2) Gross investment income

For purposes of paragraph (1), the term “gross investment income” means the gross amount of income from interest, dividends,

rents, payments with respect to securities loans (as defined in section 512(a)(5)), and roy-alties, but not including any such income to the extent included in computing the tax im-posed by section 511. Such term shall also in-clude income from sources similar to those in the preceding sentence.

(3) Deductions

(A) In general

For purposes of paragraph (1), there shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred for the production or collection of gross invest-ment income or for the management, con-servation, or maintenance of property held for the production of such income, deter-mined with the modifications set forth in subparagraph (B).

(B) Modifications

For purposes of subparagraph (A)—

(i) The deduction provided by section 167 shall be allowed, but only on the basis of the straight line method of depreciation.

(ii) The deduction for depletion provided by section 611 shall be allowed, but such deduction shall be determined without re-gard to section 613 (relating to percentage depletion).

(4) Capital gains and losses

For purposes of paragraph (1) in determining capital gain net income—

(A) There shall not be taken into account any gain or loss from the sale or other dis-position of property to the extent that such gain or loss is taken into account for pur-poses of computing the tax imposed by sec-tion 511.

(B) The basis for determining gain in the case of property held by the private founda-tion on December 31, 1969, and continuously thereafter to the date of its disposition shall be deemed to be not less than the fair mar-ket value of such property on December 31, 1969.

(C) Losses from sales or other dispositions of property shall be allowed only to the ex-tent of gains from such sales or other dis-positions, and there shall be no capital loss carryovers or carrybacks.

(D) Except to the extent provided by regu-lation, under rules similar to the rules of section 1031 (including the exception under subsection (a)(2) thereof), no gain or loss shall be taken into account with respect to any portion of property used for a period of not less than 1 year for a purpose or function constituting the basis of the private founda-tion's exemption if the entire property is ex-changed immediately following such period solely for property of like kind which is to be used primarily for a purpose or function constituting the basis for such foundation's exemption.

(5) Tax-exempt income

For purposes of this section, net investment income shall be determined by applying sec-tion 103 (relating to State and local bonds) and section 265 (relating to expenses and interest relating to tax-exempt income).